IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, v. SEABOARD FOODS LP and PIC USA, INC., Defendants.	)	Civil Action No._____

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (EPA), files this complaint and alleges as follows:

I. BRIEF STATEMENT OF THE CASE

1. This is a civil action brought against Seaboard Foods LP ("Seaboard") and PIC USA, Inc. ("PIC") for appropriate relief, including injunctive relief and civil penalties, for violations of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et. seq., at various concentrated animal feeding operations ("CAFOs") in Oklahoma that are now owned and/or operated by Seaboard and were, at the time the relevant contamination of soil and ground water began, owned and operated by PIC.

2. The United States seeks to enjoin Defendants to comply with an Administrative

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Order issued by EPA on June 26, 2001 (the "AO"), in order to abate an imminent and substantial endangerment to public health, welfare, and the environment connected with the contamination of soil and groundwater at five named farms (the "Order Farms") in Oklahoma. The United States also seeks civil penalties for Defendants' violations of the AO, pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), and such other relief as the Court may deem appropriate.

II. JURISDICTION, AUTHORITY, NOTICE AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a) and 28 U.S.C. §§ 1331, 1345 and 1355.

4. Venue is proper in this judicial district pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a) as this is a judicial district in which Seaboard and PIC are doing business and within which many of the United States' claims arose. See 28 U.S.C. §§ 1391(b)-(c) and 1395.

5. Notice of the commencement of this action and of the filing of the complaint has been given to the State of Oklahoma pursuant to section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

III. DEFENDANTS

6. Defendant Seaboard is a corporation organized under the laws of the state of Oklahoma with its principal place of business located at 9000 West 67th Street, Shawnee Mission, Kansas 66201. Among other things, Seaboard is engaged in the business of breeding and raising swine on large scale concentrated animal feeding operations in Oklahoma, Colorado, Kansas and Texas. Seaboard is the current owner and operator of all five Order Farms subject to the AO, as those terms are defined at 40 C.F.R. § 260.10.

7. The five Order Farms are as follows:

a) Lacey 1 (a.k.a. Bryan Sow & Norris Farms; S62; F436), located in Kingfisher County, Oklahoma;

b) Lacey 3 (a.k.a. Watson; F424), located in Kingfisher County, Oklahoma;

c) Lacey 4 (a.k.a. Grimes Finisher; F425), located in Kingfisher County, Oklahoma;

d) Lacey 6 (a.k.a. Miller: F426) located in Kingfisher County, Oklahoma; and

e) Fairview Nursery Complex (Fairview Nurseries 1-4) (F155-158), located in Major County, Oklahoma.

8. Defendant PIC is a corporation organized under the laws of the state of Delaware with its principal place of business located at 100 Bluegrass Commons Blvd., Suite 2200, Hendersonville, Tennessee 37075. PIC is the former owner and operator of all five Order Farms.

9. Seaboard and PIC are "persons" as defined at Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

IV. RELEVANT STATUTORY PROVISIONS

10. RCRA Section 7003, 42 U.S.C. § 6973, provides in pertinent part:

> [U]pon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including . . . any past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or is contributing to such handling, storage, treatment, transportation, or disposal to restrain such person . . . [or] to order such person to take such other action as may be necessary, or both . . . ."

11. A "solid waste," is defined by Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), as, "any... discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations..."

12. Swine effluent that has been over-applied on fields or otherwise permitted to leach into ground water, such as from a leaking lagoon, barn, or other infrastructure such as piping, is a "discarded material" from "agricultural operations" and thus is a "solid waste" as defined by Section 1004 (27) of RCRA, 42 U.S.C. § 6903 (27).

13. The authority to make a determination that an imminent and substantial endangerment exists has been delegated from the Administrator of EPA to the Regional Administrator by EPA Delegation Nos. 8-22-A and 8-22-C, dated May 11, 1994 and No. 8-23, dated March 6, 1986.

14. Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), authorizes the Administrator to bring a civil action to enforce any order of the Administrator under Section 7003(a) and to assess civil penalties against any person who willfully violates, or fails or refuses to comply with such order.

15. The Court may assess civil penalties of up to $5,500 per day for violations of an Administrative Order issued under RCRA occurring after January 30, 1997, and civil penalties of up to $6,500 per day for such violations after March 16, 2004. See 42 U.S.C. § 6973(b), the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990) (28 U.S.C. § 2461 note), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 3701 note), 61 Fed. Reg. 69,360 (Dec. 31, 1996) and 69 Fed. Reg. 7121 (Feb. 13, 2004).

V. FACTS GIVING RISE TO LIABILITY

A. Background Facts

16. Swine produce considerable amounts of nitrogenous organic waste, typically in the

range of 6 to 8 pounds of manure per 100 pounds of weight per day. Each of the five Order Farms uses one or more waste storage lagoons, many of which are more than an acre in size. Each lagoon is connected to one or more barns, and each barn contains approximately one thousand (1,000) swine. Swine manure, urine, and other waste products fall through a grate in the barn floor into a shallow, slurry pit underneath. The pits are drained periodically into the lagoons where the waste is stored until it is later disposed of on fields owned or leased by Seaboard.

17. Swine effluent concentrations of ammonia and nitrate can be considerable, as ammonia is produced by hydrolysis of waste fluids. Due to their high solubility, ammonia and nitrate can readily leach into ground water. Where aerobic conditions are present, such as is typical in a surficial aquifer, ammonia will be converted to nitrite and then nitrate.

18. The EPA has determined that nitrate poses an acute health concern at certain levels of exposure. Nitrate in drinking water is colorless and odorless. Ingestion of nitrate, converted to nitrite in the body, interferes with the oxygen carrying capacity of blood, potentially resulting in cyanosis and, at higher levels, asphyxia. High levels of nitrate in water can also cause a blood disorder in infants known as methemoglobinemia ("blue baby syndrome") that can be fatal if left untreated.

19. Defendants apply waste from the lagoons onto crop fields, primarily using two types of irrigation systems: a center pivot irrigation sprinkler, which sprays out lagoon waste while the overhead sprinkler slowly rotates around a center point, and a hard hose system, sometimes in conjunction with a center pivot, whereby an employee sprays lagoon waste from a hose and attempts to evenly distribute it over the field. Seaboard typically applies lagoon waste to fields

growing primarily grass or hay, which absorb nitrogen and other nutrients in the waste.

20. Plants can uptake nitrate and nitrite in limited qualities. Quantities of nitrate and nitrite in the soil in excess of concentrations which can be used by plants may migrate to the water table where they can adversely impact ground water quality and its use as a drinking water source. Migration to the water table may also occur where sandy soils cannot hold the nitrate and nitrite in the root zone for a sufficient amount of time to allow for the crops' natural uptake process.

B. EPA's Findings

21. The SDWA requires the EPA to publish maximum contaminant level goals (MCLGs) for contaminants that may have an adverse effect on the health of persons and that are known or anticipated to occur in public water systems. MCLGs are to be set at a level at which no known or anticipated adverse effects on the health of persons would occur and which allow a margin of safety. 40 C.F.R. § 141.2. At the same time the EPA publishes an MCLG, it must also promulgate a National Primary Drinking Water Regulation which includes either (1) a maximum contaminant level (MCL) or (2) a required treatment technique. An MCL must be set as close to the MCLG as feasible taking into account economic feasibility of drinking water systems. The MCLG and MCL for nitrate under the National Primary Drinking Water Regulations are 10 mg/L as nitrogen. 40 C.F.R. § 141.62. The EPA has established this drinking water standard to protect against the adverse effects of nitrate, including potential effects on sensitive populations.

22. At each of the Order Farms, EPA found ground water contamination in excess of the MCL for nitrate, as follows:

a) ground water downgradient of the Lacey 1 Farm contained nitrate

concentrations up to 57.6 mg/L;

b) ground water downgradient of the Lacey 3 Farm contained nitrate concentrations up to 70.7 mg/L;

c) ground water downgradient of the Lacey 4 Farm contained nitrate concentrations up to 93.5 mg/L;

d) ground water downgradient of the Lacey 6 Farm contained nitrate concentrations up to 66.6 mg/L; and

e) ground water downgradient of the Fairview Nursery Complex contained nitrate concentrations up to 49.2 mg/L.

23. Based on the above evidence, in 2001, EPA determined that the past and present handling, storage, treatment, and disposal of a solid waste (i.e., manure effluent) at the Order Farms by Defendants may present an imminent and substantial endangerment to health or the environment, including contamination of underground sources of drinking water near the Order Farms and the Cimarron River and North Canadian River.

C. Defendants' Failure to Comply with the RCRA 7003 Administrative Order

24. On June 26, 2001, EPA issued an Administrative Order pursuant to RCRA 7003(b), 42 U.S.C. § 6973(b), Order No. RCRA-06-2001-0908, to Seaboard Farms, Inc. (now Seaboard Foods LP) and PIC International Group, Inc., concerning the Order Farms. The Order requires the Defendants to identify, investigate, and prevent the mishandling of any solid waste which may present an imminent and substantial endangerment to human health and/or the environment and to ensure that remedial action deemed necessary by the EPA be designed and implemented to protect human health and/or the environment.

25. Specifically, the Order requires the Defendants to: (1) perform a Field Analysis (FA) to fully determine the nature and extent of any release(s) of solid waste at or from the Facilities; (2) perform remedial Procedures Analysis (RPA) to identify and evaluate alternatives for remedial actions(s) to prevent or mitigate any release(s) of solid waste at or from Facilities, and to collect any other information necessary to support the selection of remedial procedures at the Facilities; and (3) implement the remedial procedure or procedures (Remedial Procedures Implementation (RPI) selected by the EPA for facilities.

26. Respondents failed to comply with the Order in various ways, including by failing to characterize all sources of contamination, particularly land application source areas, as required by Paragraph 77 of the Order; by failing to determine the magnitude, horizontal and vertical extent, direction, and rate of movement of solid waste constituents in the ground water as required by Paragraphs 76 and 77 of the Order; and by failing to submit to EPA a Field Analysis Report, in accordance with requirements contained in the Remedial Action Plan, as required by Paragraph 80 of the Order.

VI. CLAIM FOR RELIEF:

FAILURE TO COMPLY WITH EPA'S RCRA 7003 ORDER

27. Paragraphs 1 through 26 of this Complaint are incorporated herein by reference.

28. Defendants Seaboard and PIC have willfully violated, or failed or refused to comply with, the AO issued by EPA to them on June 26, 2001, pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), requiring cleanup and other actions to abate the imminent and substantial endangerment to health or the environment.

29. Pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), Defendants are liable

for civil penalties of up to $5,500 per day for violations of an Administrative Order issued under RCRA occurring after January 30, 1997, and civil penalties of up to $6,500 per day for such violations after March 16, 2004. See 42 U.S.C. § 6973(b), the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990) (28 U.S.C. § 2461 note), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 3701 note), 61 Fed. Reg. 69,360 (Dec. 31, 1996) and 69 Fed. Reg. 7121 (Feb. 13, 2004).

30. Pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), Seaboard and PIC are subject to an injunctive order to restrain them from contributing to the imminent and substantial endangerment, to take such other action as may be necessary, or both.

PRAYER FOR RELIEF

WHEREFORE, based on the allegations contained herein, Plaintiff, the United States of America, requests that the Court enter judgment for the United States and against Seaboard and PIC, as follows:

1. Order Defendants to comply fully and completely with the Administrative Order, taking all actions necessary to abate the imminent and substantial endangerment identified by the EPA;

2. Assess civil penalties of up to $5,500 per day for violations of the RCRA AO occurring after January 30, 1997, and civil penalties of up to $6,500 per day for such violations after March 16, 2004, pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b);

3. Grant the United States its costs and disbursements in this action; and

4 Grant such other and further relief as the Court deems appropriate.

Respectfully Submitted,

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FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
SEABOARD FOODS LP, and	)	Civil No.
	)	
PIC USA, INC.,	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2006, I electronically mailed the Complaint and Civil Cover Sheet in the above-captioned matter to the Clerk of Court, and mailed by United States mail the Complaint to the following individuals:

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